

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES)	
)	
v.)	
)	
)	Criminal No.: 04 CR 10319 WGY
Noel Hernandez,)	
)	
Defendant.)	
)	

**DEFENDANT HERNANDEZ'S
EMERGENCY MOTION TO CONTINUE TRIAL DATE**

NOW COMES the Defendant, Noel Hernandez, ("Hernandez"), through counsel, and respectfully moves this Honorable Court to continue the trial, which is scheduled for Monday, July 18, 2005. In support thereof Counsel states the following:

1. Following a hearing on July 6, 2005, this Court continued the instant matter for trial on July 18, 2005, based upon the Defendant's request and the Government's agreement to seek and obtain psychiatric records relating to government witness Francisco Navarro.
2. Thereafter, the Government issued in excess of ten subpoenas in Puerto Rico to medical and psychiatric professionals believed to have treated Francisco Navarro.
3. To the best of my knowledge at the time of the instant filing none of these providers have disclosed records to the Government.

4. The Government did produce records relating to Mr. Navarro's psychiatric condition while at Ft. Devens and since his suicide attempt earlier this year.

5. These records begin on June 24, 2005, and are more relevant to his mental state at the time he testifies at trial as opposed to his mental state at the time of the commission of the underlying offenses in July of 2004.

6. It is anticipated that the records subpoenaed by the Government from Puerto Rico will be relevant to Navarro's state of mind at the time he committed the alleged underlying offenses.

7. Accordingly, the records from Puerto Rico are necessary and relevant to the adequate preparation of Mr. Hernandez's defense at trial.

8. The undersigned counsel is scheduled to commence a trial on July 25, 2005, in Suffolk Superior Court in the matter of *Bay State Financial Services v. Scott Wakefield*, Suffolk Superior Court Docket No. CV01-05318H.

9. Counsel also respectfully states that he is unavailable for trial on August 18, 24, 25 and 26, 2005, due to other scheduling commitments.

10. The Defendant is **not** in custody.

11. I have attempted to obtain the Government's position with respect to the instant motion, but as of the time of the filing of the instant motion, I have not heard from either Assistant United States Attorney.

WHEREFORE this Honorable Court is respectfully urged to continue the trial of the instant matter until such time as the psychiatric records of Francisco Navarro from Puerto Rico, have been obtained by the Government, translated, screened by the Court and reviewed by the undersigned counsel.

Respectfully submitted,



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Attorney for Defendant
Noel Hernandez

CERTIFICATE OF SERVICE

I, Peter Charles Horstmann, Esquire, hereby certify that on this 15th day of July, 2005, a copy of the foregoing DEFENDANT HERNANDEZ'S EMERGENCY MOTION TO CONTINUE TRIAL DATE was served electronically upon Nancy Rue, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210 and David G. Tobin, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210.



Peter Charles Horstmann, Esquire